

## Message Text

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TO AMEMBASSY PANAMA PRIORITY

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TAGS:

SUBJECT: TREATY ON EXECUTION OF PENAL SENTENCES

1. ARTICLE IX PARA 11 OF PANAMA CANAL TREATY PROVIDES THAT THE PARTIES SHALL CONCLUDE AN AGREEMENT WHEREBY NATIONALS OF EITHER STATE, WHO ARE SENTENCED BY THE COURTS OF THE OTHER STATE, AND WHO ARE DOMICILED THEREIN, MAY ELECT TO SERVE THEIR SENTENCES IN THEIR STATE OF NATIONALITY.

2. DEPARTMENT WILL BE DISCUSSING WITH AMBASSADOR JORDAN TOMORROW QUESTION OF TIMING OF NEGOTIATIONS ON EXECUTION OF PENAL SENTENCES AGREEMENT. MOST LIKELY MODEL THAT WE WOULD PROPOSE TO PANAMANIAN IS OUR BILATERAL AGREEMENT WITH MEXICO, THE ONLY ONE PRESENTLY IN FORCE AND THE MODEL ON WHICH OUR TREATIES WITH CANADA AND BOLIVIA WERE BASED. FOR CONVENIENCE OF EMBASSY, WE ARE FURNISHING ENGLISH TEXT OF LIMITED OFFICIAL USE  
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TREATY. SPANISH TEXT FOLLOWS SEPTTEL. - -

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON THE EXECUTION OF PENAL SENTENCES

THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES, DESIRING TO RENDER MUTUAL ASSISTANCE IN COMBATING CRIME INsofar AS THE EFFECTS OF SUCH CRIME EXTEND BEYOND THEIR

BORDERS AND TO PROVIDE BETTER ADMINISTRATION OF JUSTICE BY

ADOPTING METHODS FURTHERING THE OFFENDER'S SOCIAL REHABILITATION, HAVE RESOLVED TO CONCLUDE A TREATY ON THE EXECUTION OF PENAL SENTENCES AND, TO THAT END, HAVE NAMED THEIR PLENIPOTENTIARIES JOSEPH JOHN JOVA, AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY BY THE PRESIDENT OF THE UNITED STATES OF AMERICA AND ALFONSO GARCIA ROBLES, SECRETARY OF FOREIGN RELATIONS BY THE PRESIDENT OF THE UNITED MEXICAN STATES.

WHO, HAVING EXCHANGED THEIR FULL POWERS AND HAVING FOUND THEM IN PROPER AND DUE FORM, HAVE AGREED ON THE FOLLOWING ARTICLES:

ARTICLE I

(1) SENTENCES IMPOSED IN THE UNITED MEXICAN STATES ON NATIONALS OF THE UNITED STATES OF AMERICA MAY BE SERVED IN PENAL INSTITUTIONS OR SUBJECT TO THE SUPERVISION OF THE AUTHORITIES OF THE UNITED STATES OF AMERICA IN ACCORDANCE WITH THE PROVISIONS OF THIS TREATY.

(2) SENTENCES IMPOSED IN THE UNITED STATES OF AMERICA ON NATIONALS OF THE UNITED MEXICAN STATES MAY BE SERVED IN LIMITED OFFICIAL USE  
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PENAL INSTITUTIONS OR SUBJECT TO THE SUPERVISION OF THE AUTHORITIES OF THE UNITED MEXICAN STATES IN ACCORDANCE WITH THE PROVISIONS OF THIS TREATY.

ARTICLE II

THIS TREATY SHALL APPLY ONLY SUBJECT TO THE FOLLOWING CONDITIONS:

(1) THAT THE OFFENSE FOR WHICH THE OFFENDER WAS CONVICTED AND SENTENCED IS ONE WHICH WOULD ALSO BE GENERALLY PUNISHABLE AS A CRIME IN THE RECEIVING STATE, PROVIDED, HOWEVER, THAT THIS CONDITION SHALL NOT BE INTERPRETED SO AS TO REQUIRE THAT THE CRIMES DESCRIBED IN THE LAWS OF THE TWO STATES BE IDENTICAL IN SUCH MATTERS NOT AFFECTING THE CHARACTER OF THE CRIMES SUCH AS THE QUANTITY OF PROPERTY OR MONEY TAKEN OR POSSESSED OR THE PRESENCE OF INTERSTATE COMMERCE.

(2) THAT THE OFFENDER MUST BE A NATIONAL OF THE RECEIVING STATE.

(3) THAT THE OFFENDER NOT BE A DOMICILIARY OF THE TRANSFERRING STATE.

(4) THAT THE OFFENSE NOT BE A POLITICAL OFFENSE WITHIN

THE MEANING OF THE TREATY OF EXTRADITION OF 1899 BETWEEN THE PARTIES, NOR AN OFFENSE UNDER THE IMMIGRATION OR THE PURELY MILITARY LAWS OF A PARTY.

(5) THAT AT LEAST SIX MONTHS OF THE OFFENDER'S SENTENCE REMAINS TO BE SERVED AT THE TIME OF PETITION; AND

(6) THAT NO PROCEEDING BY WAY OF APPEAL OR OF COLLATERAL ATTACK UPON THE OFFENDER'S CONVICTION OR SENTENCE BE PENDING IN THE TRANSFERRING STATE AND THAT THE PRESCRIBED TIME LIMITED OFFICIAL USE  
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FOR APPEAL OF THE OFFENDER'S CONVICTION OR SENTENCE HAS EXPIRED.

### ARTICLE III

EACH STATE SHALL DESIGNATE AN AUTHORITY TO PERFORM THE FUNCTIONS PROVIDED IN THIS TREATY.

### ARTICLE IV

(1) EVERY TRANSFER UNDER THE TREATY SHALL BE COMMENCED BY THE AUTHORITY OF THE TRANSFERRING STATE. NOTHING IN THIS TREATY SHALL PREVENT AN OFFENDER FROM SUBMITTING A REQUEST TO THE TRANSFERRING STATE FOR CONSIDERATION OF HIS TRANSFER.

(2) IF THE AUTHORITY OF THE TRANSFERRING STATE FINDS THE TRANSFER OF AN OFFENDER APPROPRIATE, AND IF THE OFFENDER GIVES HIS EXPRESS CONSENT FOR HIS TRANSFER, SAID AUTHORITY SHALL TRANSMIT A REQUEST FOR TRANSFER, THROUGH DIPLOMATIC CHANNELS, TO THE AUTHORITY OF THE RECEIVING STATE.

(3) IF THE AUTHORITY OF THE RECEIVING STATE APPROVES THE REQUEST, IT SHALL PROMPTLY SO INFORM THE TRANSFERRING STATE AND SHALL INITIATE THE NECESSARY PROCEDURES TO EFFECT THE TRANSFER OF THE OFFENDER. IF IT DOES NOT APPROVE THE REQUEST, IT SHALL NO NOTIFY PROMPTLY THE AUTHORITY OF THE TRANSFERRING STATE.

(4) IN DECIDING UPON THE TRANSFER OF AN OFFENDER THE AUTHORITY OF EACH PARTY SHALL BEAR IN MIND ALL FACTORS BEARING UPON THE PROBABILITY THAT THE TRANSFER WILL CONTRIBUTE TO THE SOCIAL REHABILITATION OF THE OFFENDER, IN-  
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CLUDING THE NATURE AND SEVERITY OF HIS OFFENSE AND HIS

PREVIOUS CRIMINAL RECORD, IF ANY, HIS MEDICAL CONDITION, THE STRENGTH OF HIS CONNECTIONS BY RESIDENCE, PRESENCE IN THE TERRITORY, FAMILY RELATIONS AND OTHERWISE TO THE SOCIAL LIFE OF THE TRANSFERRING STATE AND THE RECEIVING STATE.

(5) IF THE OFFENDER WAS SENTENCED BY THE COURTS OF A STATE OF ONE OF THE PARTIES, THE APPROVAL OF THE AUTHORITIES OF THAT STATE, AS WELL AS THAT OF THE FEDERAL AUTHORITY, SHALL BE REQUIRED. THE FEDERAL AUTHORITY OF THE RECEIVING STATE SHALL, HOWEVER, BE RESPONSIBLE FOR THE CUSTODY OF THE TRANSFERRED OFFENDER.

(6) NO OFFENDER SHALL BE TRANSFERRED UNLESS EITHER THE SENTENCE WHICH HE IS SERVING HAS A SPECIFIED DURATION, OR SUCH A DURATION HAS SUBSEQUENTLY BEEN FIXED BY THE APPROPRIATE ADMINISTRATIVE AUTHORITIES.

(7) THE TRANSFERRING STATE SHALL FURNISH THE RECEIVING STATE A STATEMENT SHOWING THE OFFENSE OF WHICH THE OFFENDER WAS CONVICTED, THE DURATION OF THE SENTENCE, THE LENGTH OF TIME ALREADY SERVED BY THE PRISONER AND ANY CREDITS TO WHICH THE OFFENDER IS ENTITLED, SUCH AS, BUT NOT LIMITED TO, WORK DONE, GOOD BEHAVIOR OR PRETRIAL CONFINEMENT. SUCH STATEMENT SHALL BE TRANSLATED INTO THE LANGUAGE OF THE RECEIVING STATE AND DULY AUTHENTICATED. THE TRANSFERRING STATE SHALL ALSO FURNISH THE RECEIVING STATE A CERTIFIED COPY OF THE SENTENCED HANDED DOWN BY THE COMPETENT JUDICIAL AUTHORITY AND ANY MODIFICATIONS THEREOF. IT SHALL ALSO FURNISH ADDITIONAL INFORMATION THAT MIGHT BE USEFUL TO THE AUTHORITY OF THE RECEIVING STATE IN DETERMINING THE TREATMENT OF THE CONVICT WITH A VIEW TO HIS SOCIAL REHABILITATION.

(8) IF THE RECEIVING STATE CONSIDERS THAT THE DOCUMENTS SUPPLIED BY THE TRANSFERRING STATE DO NOT ENABLE IT TO LIMITED OFFICIAL USE  
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IMPLEMENT THIS TREATY, IT MAY REQUEST ADDITIONAL INFORMATION.

(9) EACH PARTY SHALL TAKE THE NECESSARY LEGISLATIVE MEASURES AND, WHERE REQUIRED, SHALL ESTABLISH ADEQUATE PROCEDURES, TO GIVE FOR THE PURPOSES OF THIS TREATY, LEGAL EFFECT, WITHIN ITS TERRITORY TO SENTENCES PRONOUNCED BY COURTS OF THE OTHER PARTY.

#### ARTICLE V

(1) DELIVERY OF THE OFFENDER BY THE AUTHORITIES OF THE TRANSFERRING STATE TO THOSE OF THE RECEIVING STATE SHALL OCCUR AT A PLACE AGREED UPON BY BOTH PARTIES. THE TRANS-

FERRING STATE SHALL AFFORD AN OPPORTUNITY TO THE RECEIVING STATE, IF IT SO DESIRES, TO VERIFY, PRIOR TO THE TRANSFER, THAT THE OFFENDER'S CONSENT TO THE TRANSFER IS GIVEN VOLUNTARILY AND WILL FULL KNOWLEDGE OF THE CONSEQUENCES THEREOF,

THROUGH THE OFFICER DESIGNATED BY THE LAWS OF THE RECEIVING STATE.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS TREATY, THE COMPLETION OF A TRANSFERRED OFFENDER'S SENTENCE SHALL BE CARRIED OUT ACCORDING TO THE LAWS AND PROCEDURES OF THE RECEIVING STATE, INCLUDING THE APPLICATION OF ANY PROVISIONS FOR REDUCTION OF THE TERM OF CONFINEMENT BY PAROLE, CONDITIONAL RELEASE OR OTHERWISE. THE TRANSFERRING STATE SHALL, HOWEVER, RETAIN THE POWER TO PARDON OR GRANT AMNESTY TO THE OFFENDER AND THE RECEIVING STATE SHALL, UPON BEING ADVISED OF SUCH PARDON OR AMNESTY RELEASE THE OFFENDER.

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(3) NO SENTENCE OF CONFINEMENT SHALL BE ENFORCED BY THE RECEIVING STATE IN SUCH A WAY AS TO EXTEND ITS DURATION BEYOND THE DATE AT WHICH IT WOULD HAVE TERMINATED ACCORDING TO THE SENTENCE OF THE COURT OF THE TRANSFERRING STATE.

(4) THE RECEIVING STATE SHALL NOT BE ENTITLED TO ANY REIMBURSEMENT FOR THE EXPENSES INCURRED BY IT IN THE COMPLETION OF THE OFFENDER'S SENTENCE.

(5) THE AUTHORITIES OF EACH PARTY SHALL, EVERY SIX MONTHS, EXCHANGE REPORTS INDICATING THE STATUS OF CONFINEMENT OF ALL OFFENDERS TRANSFERRED UNDER THIS TREATY, INCLUDING IN PARTICULAR THE PAROLE OR RELEASE OF ANY OFFENDER. EITHER PARTY MAY, AT ANY TIME, REQUEST A SPECIAL REPORT ON THE STATUS OF THE EXECUTION OF AN INDIVIDUAL SENTENCE.

(6) THE FACT THAT AN OFFENDER HAS BEEN TRANSFERRED UNDER THE PROVISIONS OF THIS TREATY SHALL NOT PREJUDICE HIS CIVIL RIGHTS IN THE RECEIVING STATE IN ANY WAY BEYOND THOSE WAYS IN WHICH THE FACT OF HIS CONVICTION IN THE TRANSFERRING STATE BY ITSELF EFFECTS SUCH PREJUDICE UNDER THE LAWS OF THE RECEIVING STATE OR ANY STATE THEREOF.

#### ARTICLE VI

THE TRANSFERRING STATE SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY PROCEEDINGS, REGARDLESS OF THEIR FORM, INTENDED TO CHALLENGE, MODIFY OR SET ASIDE SENTENCES HANDED DOWN BY ITS COURTS. THE RECEIVING STATE SHALL, UPON BEING ADVISED BY THE TRANSFERRING STATE OF ACTION AFFECTING THE

SENTENCE, TAKE THE APPROPRIATE ACTION IN ACCORDANCE WITH SUCH ADVICE.

ARTICLE VII

AN OFFENDER DELIVERED FOR EXECUTION OF A SENTENCE UNDER  
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THIS TREATY MAY NOT BE DETAINED, TRIED OR SENTENCED IN THE RECEIVING STATE FOR THE SAME OFFENSE UPON WHICH THE SENTENCE TO BE EXECUTED IS BASED. FOR PURPOSES OF THIS ARTICLE, THE RECEIVING STATE WILL NOT PROSECUTE FOR ANY OFFENSE THE PROSECUTION OF WHICH WOULD HAVE BEEN BARRED UNDER THE LAW OF THAT STATE, IF THE SENTENCE HAD BEEN IMPOSED BY ONE OF ITS COURTS, FEDERAL OR STATE.

ARTICLE VIII

(1) THIS TREATY MAY ALSO BE APPLICABLE TO PERSONS SUBJECT TO SUPERVISION OR OTHER MEASURES UNDER THE LAWS OF ONE OF THE PARTIES RELATING TO YOUTHFUL OFFENDERS. THE PARTIES SHALL, IN ACCORDANCE WITH THEIR LAWS, AGREE TO THE TYPE OF TREATMENT TO BE ACCORDED SUCH INDIVIDUALS UPON TRANSFER. CONSENT FOR THE TRANSFER SHALL BE OBTAINED FROM THE LEGALLY AUTHORIZED PERSON.

(2) BY SPECIAL AGREEMENT BETWEEN THE PARTIES, PERSONS ACCUSED OF AN OFFENSE BUT DETERMINED TO BE OF UNSOUND MENTAL CONDITION MAY BE TRANSFERRED FOR CARE IN INSTITUTIONS IN THE COUNTRY OF NATIONALITY.

(3) NOTHING IN THIS TREATY SHALL BE INTERPRETED TO LIMIT THE ABILITY WHICH THE PARTIES MAY HAVE, INDEPENDENT OF THE PRESENT TREATY, TO GRANT OR ACCEPT THE TRANSFER OF YOUTHFUL OR OTHER OFFENDERS.

ARTICLE IX

FOR THE PURPOSES OF THIS TREATY --

(1) "TRANSFERRING STATE" MEANS THE PARTY FROM WHICH THE  
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OFFENDER IS TO BE TRANSFERRED.

(2) "RECEIVING STATE" MEANS THE PARTY TO WHICH THE OFFENDER IS TO BE TRANSFERRED; AND

(3) "OFFENDER" MEANS A PERSON WHO, IN THE TERRITORY OF ONE OF THE PARTIES, HAS BEEN CONVICTED OF A CRIME AND SENTENCED EITHER TO IMPRISONMENT OR TO A TERM OF PROBATION, PAROLE, SUSPENDED SENTENCE, OR ANY OTHER FORM OF SUPERVISION OR CONDITIONAL SENTENCE WITHOUT CONFINEMENT.

(4) A "DOMICILARY" MEANS A PERSON WHO HAS BEEN PRESENT IN THE TERRITORY OF ONE OF THE PARTIES FOR AT LEAST FIVE YEARS WITH AN INTENT TO REMAIN PERMANENTLY THEREIN.

#### ARTICLE X

(1) THIS TREATY IS SUBJECT TO RATIFICATION. THE EXCHANGE OF RATIFICATIONS SHALL TAKE PLACE IN WASHINGTON.

(2) THIS TREATY SHALL ENTER INTO FORCE THIRTY DAYS AFTER THE EXCHANGE OF RATIFICATIONS AND SHALL REMAIN IN FORCE FOR THREE YEARS.

(3) SHOULD NEITHER CONTRACTING PARTY HAVE NOTIFIED THE OTHER NINETY DAYS BEFORE THE THREE-YEAR PERIOD MENTIONED IN THE PRECEDING PARAGRAPH HAS EXPIRED OF ITS INTENTION TO LET THE TREATY TERMINATE, THE TREATY SHALL REMAIN IN FORCE FOR ANOTHER THREE YEARS, AND SO ON EVERY THREE YEARS.

DONE AT MEXICO CITY IN DUPLICATE, THIS TWENTY-FIFTH DAY OF NOVEMBER, ONE THOUSAND NINE HUNDRED SEVENTY SIX, IN THE ENGLISH AND SPANISH LANGUAGES, EACH TEXT OF WHICH SHALL BE EQUALLY AUTHENTIC.

FOR THE UNITED STATES OF AMERICA    FOR THE UNITED MEXICAN  
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